

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
-against-	:	
	:	20-CR-102 (VEC)
	:	
MARIA FERNANDA GUTIERREZ OSPINA,	:	<u>ORDER</u>
JOSE ANDRE URENA SANCHO,	:	
	:	
Defendants.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS the Court is scheduled to sentence Ms. Gutierrez on Thursday, August 26, 2021 at 11:00 A.M., Dkt. 65; and

WHEREAS Ms. Gutierrez's Pre-Sentence Report ("PSR") refers to two victim impact statements, *see* Gutierrez PSR, Dkt. 66 at ¶¶ 46–50;

IT IS HEREBY ORDERED that by no later than **Monday, August 23, 2021**, the Government must immediately file any victim letters with appropriate redactions on the public docket and must email Chambers unredacted versions. *See* Ind. Prac. R. 3(A).

IT IS FURTHER ORDERED that by no later than **Friday, August 27, 2021**, the Government must file a letter answering the following questions:

1. Have all victims been notified of the sentencing?
2. Do any victims wish to be heard at sentencing?
3. What is the Government's theory on the scope of the fraud in which Ms. Gutierrez and Mr. Urena were engaged? The restitution order in Ms. Gutierrez's case lists victims of the underlying fraud scheme that generated the funds Ms. Gutierrez was involved in laundering. Consent Order of Restitution, Dkt. 71-2. Ms. Gutierrez's

allocuted to allowing her accounts to be used to move money that she learned was proceeds of a fraud, but her allocution did not suggest that she was involved in or knew anything about the underlying fraud. *See* Gutierrez Plea Transcript, Dkt. 52 at 22–29. Similarly, Mr. Urena allocuted to lying to the bank about money that was moving into his account, but his allocution did not suggest that he was involved in or knew anything about the underlying fraud. *See* Urena Plea Transcript, Dkt. 60 at 25–34; Urena Plea Transcript, Dkt. 62 at 7–8. What is the Government’s proffer with respect to these defendants’ involvement in or knowledge of the underlying scheme to defraud elderly people?

4. Did any bank experience loss from the fraud?
5. In Mr. Urena’s PSR, it states that: “According to information provided by the Government, actual losses amounting to \$3,207,116.74 were sustained by the victims as a result of the fraud perpetrated by the defendants during the course of the instant offense.” Urena PSR, Dkt. 67 ¶ 48; *see also* Gutierrez PSR ¶ 42 (noting that the defendants and their co-conspirators received a total of \$3,207,116.74 from victims between 2016 and 2019). Ms. Gutierrez’s restitution is listed as \$1,037,372.86, *see* Consent Order of Restitution at 1–2, which is a little under a third of the actual losses. Mr. Urena, however, is being held accountable for \$609,974.07 in restitution. Urena PSR ¶ 48. Given that Mr. Urena’s portion of the agreed upon restitution is less than one-third of the total, it appears the Government is proposing that the Court should apportion restitution liability. *See* 18 U.S.C. § 3664(h) (allowing restitution to be apportioned to reflect a defendant’s level of contribution to the victim’s loss and the economic circumstances of each defendant). But the Consent Order itself states that

restitution is joint and several. *See* Consent Order of Restitution at 1–2. Is the Government proposing that all Defendants involved in this fraud be ordered to pay restitution jointly and severally with the others or is the Government proposing liability being apportioned pursuant to 18 U.S.C. § 3664(h)? The Government must explain the factual basis for its proposed apportionment of restitution.

6. The plea agreements for both Ms. Gutierrez and Mr. Urena set the loss amount for Guidelines purposes as between \$550,000 and \$1.5 million. The Government must explain the basis for its loss calculation for these two Defendants.

IT IS FURTHER ORDERED that Defendants may respond, if either wishes, to the Government's letter by no later than **Friday, September 3, 2021**.

IT IS FURTHER ORDERED that the sentencing of Ms. Gutierrez is adjourned to **Monday, September 13, 2021 at 2:00 P.M.** The sentencing will be held in Courtroom 443 of the Thurgood Marshall United States Courthouse, located at 40 Foley Square, New York, New York 10007.

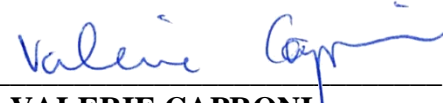
IT IS FURTHER ORDERED that per the SDNY COVID-19 COURTHOUSE ENTRY PROGRAM, any person who appears at any SDNY courthouse must complete a questionnaire and have his or her temperature taken. Please see the enclosed instructions. Completing the questionnaire ahead of time will save time and effort upon entry. Only those individuals who meet the entry requirements established by the questionnaire will be permitted entry. Please contact chambers promptly if you or your client do not meet the requirements.

IT IS FURTHER ORDERED that any person who appears at any SDNY courthouse must comply with Standing Order M10-468 (21-MC-164), which further pertains to courthouse entry.

IT IS FURTHER ORDERED that interested members of the public may attend by dialing 1-888-363-4749, using the access code 3121171 and the security code 0120. All of those accessing the hearing are reminded that recording or rebroadcasting of the proceeding is prohibited by law.

SO ORDERED.

Date: August 23, 2021
New York, NY



VALERIE CAPRONI
United States District Judge

Instructions for Courthouse Entry

All members of the public, including attorneys, appearing at a Southern District of New York courthouse must complete a questionnaire and have their temperature taken before being allowed entry into that courthouse.

On the day you are due to arrive at the courthouse, click on the following weblink to begin the enrollment process. Follow the instructions and fill out the questionnaire. If your answers meet the requirements for entry, you will be sent a QR code to be used at the SDNY entry device at the courthouse entrance.

Weblink: <https://app.certify.me/SDNYPublic>

Note: If you do not have a mobile phone or mobile phone number, you must complete the questionnaire and temperature screening at an entry device at the courthouse.